

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CORPORAL B. KURT PRICE, et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	C.A.No.04-956-GMS
	:	
COLONEL L. AARON CHAFFINCH, et al.,	:	
	:	
Defendants.	:	

SERGEANT CHRISTOPHER D. FORAKER,	:	
	:	
Plaintiff,	:	
	:	
v.	:	C.A.No.04-1207-GMS
	:	
COLONEL L. AARON CHAFFINCH, et al.,	:	
	:	
Defendants.	:	

NOTICE OF RECORDS DEPOSITION

TO: Records Custodian
Office of Dr. Eric Smith
ENT & Facial Plastic Surgery
826 South Governors Avenue
Dover, DE 19904

Please take notice that pursuant to Rule 30 of the Federal Rules of Civil Procedure, the undersigned attorney will take the records deposition of the Records Custodian of the Office of Dr. Eric Smith at the offices of THE NEUBERGER FIRM, P.A., Two East Seventh Street, Suite 302, Wilmington, DE 19801, on January 20, 2006 at 9:30 a.m. The deposition will continue from day to day until completed.

The purposes of this deposition is for copying only and it is expected that no

attorneys will be present.

DUCES TECUM: Any and all documents as set out in Exhibit A to the subpoena which is attached hereto.

NOTE: Personal appearance of the deponent will be waived if the requested documents are received at the offices of THE NEUBERGER FIRM, P.A. by January 18, 2006.

THE NEUBERGER FIRM, P.A.

/s/ Thomas S. Neuberger
THOMAS S. NEUBERGER, ESQ. (#243)
STEPHEN J. NEUBERGER, ESQ. (#4440)
Two East Seventh Street, Suite 302
Wilmington, Delaware 19801
(302) 655-0582
TSN@NeubergerLaw.com
SJN@NeubergerLaw.com

DATED: December 28, 2005

Attorneys for Plaintiffs

EXHIBIT A

1. All documents, records, notes, memoranda, and/or writings in your possession, custody, or control, including, but not limited to, those prepared by Dr. Eric Smith, or anyone associated with his practice and those from other facilities and physicians, that relate or refer to: Major Joseph Neal Forester (D.O.B.: 04/08/46)¹.

2. All test results in your possession, custody or control, including, but not limited to, those for Audiometric Screens and any other hearing tests administered to: Major Joseph Neal Forester (D.O.B.: 04/08/46).

¹ Please call Cheryl Sasadeusz, Esq. at (302) 655-0582 if you need verbal confirmation of Major Joseph Neal Forester's Social Security Number.

AO88 (Rev. 1/94) Subpoena in a Civil Case

Issued by the
UNITED STATES DISTRICT COURT

DISTRICT OF

DELAWARE

B. Kurt Price et al., Plaintiffs

V.

COL. L. AARON CHAFFINCH, et al.

Defendants

SUBPOENA IN A CIVIL CASE

Case Number:¹ 04-956-GMS

TO: **Records Custodian of Office of Dr. Eric Smith**
ENT & Facial Plastic Surgery
826 South Governors Ave., Dover, DE 19904

☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
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☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):


SEE ATTACHED NOTICE

PLACE	DATE AND TIME
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☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
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Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
 PLAINTIFF	12/28/05
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER	
Thomas S. Neuberger Two East Seventh St., Suite 302, Wilmington, DE 19801 (302) 655-0582	

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on next page)

¹ If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE

DATE

PLACE

SERVED

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance,

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend

trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in who behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

CERTIFICATE OF SERVICE

I, Thomas S. Neuberger, being a member of the bar of this Court do hereby certify that on December 28, 2005, I electronically filed this **Notice of Records Deposition** with the Clerk of the Court using CM/ECF which will send notification of such filing to the following:

Noel C. Burnham
Richard M. Donaldson
Montgomery, McCracken, Walker & Rhoads, LLP
300 Delaware Avenue, Suite 750
Wilmington, DE 19801
(302) 504-7820

/s/ Thomas S. Neuberger
THOMAS S. NEUBERGER, ESQ.

cc: client
Edward T. Ellis - via Email: eellis@mmwr.com

FTU/Foraker / Subpoenas / Notice of Records Deposition - Sharman